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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration.

14 CFR Part 47

[Docket No. FAA-2002-12377; Amendment No. 47-26]

RIN 2120–AH75

Aircraft Registration Requirements; Clarification of "Court of Competent Jurisdiction"

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: FAA is amending language in the aircraft registration regulations governing aircraft last previously registered in a foreign country. This amendment clarifies the term "court of competent jurisdiction", and what the Administrator considers satisfactory evidence that foreign registration of an aircraft has ended or is invalid. This amendment is necessary for FAA compliance with obligations from the Convention on International Civil Aviation.

DATES: Effective [*Insert date 30 days after date of publication in the Federal Register*]. April 3, 2003

FOR FURTHER INFORMATION CONTACT: Julie A. Stanford, Aircraft Registration Branch, AFS-750, Civil Aviation Registry, Flight Standards Service, Federal Aviation Administration, Post Office Box 25504, Oklahoma City, OK 73125; Telephone (405) 954-3131

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/armhome.htm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question about this document may contact its local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at http://www.faa.gov/avr/arm/sbrefa.htm, or by e-mailing us at 9-AWA-SBREFA@faa.gov.

Background

On August 9, 1946, the United States became a party to the Convention on International Civil Aviation, 61 Stat. 1180 (Chicago Convention). Under the Chicago Convention, the contracting parties agreed on certain principles and arrangements so international civil aviation could develop in a safe and orderly manner.

In considering the orderly registration of aircraft, Chapter III-NATIONALITY OF AIRCRAFT, Article 17 of the Chicago Convention, provides that "aircraft have the nationality of the State in which they are registered." Therefore, "an aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another" (Article 18). The rules for changing registration mandate that "the registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations" (Article 19). Before registering an aircraft, an importing State must first ensure that the exporting State has removed the aircraft from its registry. Under Article 21 of the Chicago Convention, the importing State requests proof from the State of last registration that registration of a specific aircraft has ended and the aircraft is no longer on the exporting State's registry.

In promulgating § 47.37(b)(2), the Administrator determined that "a final judgment or decree of a court of competent jurisdiction that determines, under the law of the country concerned, that the registration has in fact become invalid" is satisfactory evidence of termination of foreign registration. The Administrator interprets the phrase "court of competent jurisdiction" to be a court of the country where the aircraft was last registered.

In two recent cases (*IAL Aircraft Holding, Inc. v. Federal Aviation Administration, 206 F.3d 1042,* vacated, *216 F.3d 1304 (11th Cir. 2000)* [hereinafter referred to as IAL Aircraft] and *Air One Helicopters, Inc. v. Federal Aviation Admin., 86 F.3d 880 (9th Cir. 1996)* [hereinafter referred to as Air One]), a divided panel of the court interpreted the phrase "court of competent jurisdiction" differently from FAA. In Air One, the Ninth Circuit decided that a United States court of appeals was itself a "court of competent jurisdiction" capable of rejecting a determination of the Spanish registry that the aircraft's Spanish registry was valid. In IAL Aircraft, the Eleventh Circuit held that a state trial court having jurisdiction over the aircraft *in rem* was a "court of competent jurisdiction." Therefore, a state trial court could determine that a Brazilian registration was invalid, despite Brazil's continued insistence that its registration remained valid.

On July 6, 2000, the Eleventh Circuit vacated its earlier decision. The Eleventh Circuit found the court lacked Article III jurisdiction at the time it issued its decision. IAL Aircraft had not disclosed the sale of the aircraft while the case was pending before the court.

FAA does not agree with these decisions, which reject the agency's interpretation of its own regulation. Moreover, continuing to litigate such cases of interpretation would adversely impact FAA resources. Therefore, on May 17, 2002, FAA issued a notice of proposed rulemaking to amend § 47.37(b)(2). The proposed amendment would add language to that section to clearly state that the "court of competent jurisdiction" must be a court of the country where the aircraft was last registered. FAA did not receive any comments about the proposal.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations. This amendment is necessary for FAA compliance with the agreements contained in the Convention.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination the benefits of the intended regulation justify its costs. Our assessment of this rulemaking shows that its economic impact is minimal because the issues addressed by this change rarely occur. FAA is aware of only two cases where judgments were pursued and obtained in countries other than where the aircraft was last registered (*IAL Aircraft Holding, Inc. v. Federal Aviation Administration, 206 F.3d 1042, 1045,* vacated, *216 F.3d 1304 (11th Cir. 2000)* and *Air One Helicopters, Inc. v. Federal Aviation Admin., 86 F.3d 880 (9th Cir. 1996).* The judgment occurred in the country where the aircraft was last registered in other similar aircraft registration changes.

This amendment will affect only those few cases where the change in aircraft registration is filed in the United States rather than the country where the aircraft was last registered. While there may be some costs associated with these cases, such costs would vary depending on the country of last registration. Sometimes, the costs may be less than those normally associated with obtaining a proper judgment from a court of the United States.

We have not prepared a "regulatory impact analysis" because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order. Similarly, we have not prepared a full "regulatory evaluation," which is the written cost/benefit analysis normally required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to prepare a full evaluation where the economic impact of a rule is minimal.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) established "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact of a substantial number of small entities. If the

agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rules clarifies the term "court of competent jurisdiction." This action will have a minimal impact on small entities in the aviation industry. Consequently, FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities in the aviation industry.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities, and thus have a neutral trade impact.

Unfunded Mandates Assessment.

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 3132, Federalism

FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, October 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address in the ADDRESSES section.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

FAA has assessed the energy impact of the final rule in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined the final rule is not a major regulatory action under the EPCA.

List of Subjects in 14 CFR Part 47

Aircraft; Reporting and recordkeeping requirements

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 47 of Chapter I of Title 14, Code of Federal Regulations as follows:

PART 47–AIRCRAFT REGISTRATION

1. The authority citation for part 47 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113-40114, 44101-44108, 44110-44111, 44703-44704, 44713, 45302, 46104, 46301; 4 U.S.T. 1830.

2. Amend § 47.37(b)(2) to read as follows:

BF 2-27-03

§ 47.37 Aircraft last previously registered in a foreign country.

* * * * *

(b) * * *

(2) A final judgment or decree of a court of competent jurisdiction of the foreign country, determining that, under the laws of that country, the registration has become invalid.

Issued in Washington, DC, on FEB 26 2003

Marion C. Blakey
Administrator

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